

§ 1905.21 Manner of service.

Service of any document upon any party may be made by personal delivery of, or by mailing, a copy of the document to the last known address of the party. The person serving the document shall certify to the manner and the date of the service.

§ 1905.22 Hearing examiners; powers and duties.

(a) *Powers.* A hearing examiner designated to preside over a hearing shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:

- (1) To administer oaths and affirmations;
- (2) To rule upon offers of proof and receive relevant evidence;
- (3) To provide for discovery and to determine its scope;
- (4) To regulate the course of the hearing and the conduct of the parties and their counsel therein;
- (5) To consider and rule upon procedural requests;
- (6) To hold conferences for the settlement or simplification of the issues by consent of the parties;
- (7) To make, or to cause to be made, an inspection of the employment or place of employment involved.
- (8) To make decisions in accordance with the Act, this part, and the Administrative Procedure Act (5 U.S.C. Ch. 5); and

(9) To take any other appropriate action authorized by the Act, this part, or the Administrative Procedure Act.

(b) *Private consultation.* Except to the extent required for the disposition of ex parte matters, a hearing examiner may not consult a person or a party on any fact at issue, unless upon notice and opportunity for all parties to participate.

(c) *Disqualification.* (1) When a hearing examiner deems himself disqualified to preside over a particular hearing, he shall withdraw therefrom by notice on the record directed to the Chief Hearing Examiner.

(2) Any party who deems a hearing examiner for any reason to be disqualified to preside, or to continue to preside, over a particular hearing, may file with the Chief Hearing Examiner of

the Department of Labor a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. The Chief Hearing Examiner shall rule upon the motion.

(d) *Contumacious conduct; failure or refusal to appear or obey the rulings of a presiding hearing examiner.* (1) Contumacious conduct at any hearing before the hearing examiner shall be grounds for exclusion from the hearing.

(2) If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the hearing examiner may make such orders with regard to the refusal as are just and appropriate, including an order denying the application of an applicant or regulating the contents of the record of the hearing.

(e) *Referral to Federal Rules of Civil Procedure.* On any procedural question not regulated by this part, the Act, or the Administrative Procedure Act, a hearing examiner shall be guided to the extent practicable by any pertinent provisions of the Federal Rules of Civil Procedure.

§ 1905.23 Prehearing conferences.

(a) *Convening a conference.* Upon his own motion or the motion of a party, the hearing examiner may direct the parties or their counsel to meet with him for a conference to consider:

- (1) Simplification of the issues;
- (2) Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;
- (3) Stipulations, admissions of fact, and of contents and authenticity of documents;
- (4) Limitation of the number of parties and of expert witnesses; and
- (5) Such other matters as may tend to expedite the disposition of the proceeding, and to assure a just conclusion thereof.

(b) *Record of conference.* The hearing examiner shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the

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parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

§ 1905.24 Consent findings and rules or orders.

(a) *General.* At any time before the reception of evidence in any hearing, or during any hearing a reasonable opportunity may be afforded to permit negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the presiding hearing examiner, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.

(b) *Contents.* Any agreement containing consent findings and rule or order disposing of a proceeding shall also provide:

(1) That the rule or order shall have the same force and effect as if made after a full hearing;

(2) That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;

(3) A waiver of any further procedural steps before the hearing examiner and the Assistant Secretary; and

(4) A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement to the presiding hearing examiner for his consideration; or

(2) Inform the presiding hearing examiner that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the presiding

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hearing examiner may accept such agreement by issuing his decision based upon the agreed findings.

§ 1905.25 Discovery.

(a) *Depositions.* (1) For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition. Depositions may be taken orally or upon written interrogatories before any person designated by the presiding hearing examiner and having power to administer oaths.

(2) *Application.* Any party desiring to take the deposition of a witness may make application in writing to the presiding hearing examiner, setting forth:

(i) The reasons why such deposition should be taken;

(ii) The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;

(iii) The name and address of each witness; and

(iv) The subject matter concerning which each witness is expected to testify.

(3) *Notice.* Such notice as the presiding hearing examiner may order shall be given by the party taking the deposition to every other party.

(4) *Taking and receiving in evidence.* Each witness testifying upon deposition shall be sworn, and the parties not calling him shall have the right to cross-examine him. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by him, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a